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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,342	11/10/2003	Marcus C. Minges	M2341/53410/NWJ-Lift	5152
23378	7590	07/20/2004	EXAMINER	
BRADLEY ARANT ROSE & WHITE, LLP INTELLECTUAL PROPERTY DEPARTMENT-NWJ 1819 FIFTH AVENUE NORTH BIRMINGHAM, AL 35203-2104			JULES, FRANTZ F	
		ART UNIT		PAPER NUMBER
				3617

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/705,342	MINGES, MARCUS C.
	Examiner Frantz F. Jules	Art Unit 3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4 is/are allowed.
- 6) Claim(s) 1-3 and 5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by DiRosa (US 5,231,933).

#### Claims 1-3

DiRosa meets all the limitations of claims 1-3 by showing in fig. 1, a rail mounted transportation system comprising a rail (11) with upper and lower surfaces and a support body (12) being mountable upon said rail for traversing along a length of said rail (3) by an upper traversing member (13) which is a closest wheel in operable communication with the upper surface of the rail and a lower traversing member (15) which is a furthest wheel maintained in operable communication with the rail (11) by torque, wherein the upper surface and the lower surfaces of the rail (11) are separated by a distance that varies along the length of the rail. A method of adjusting the attitude of a rail mounted transportation device (12) is disclosed which comprising the step of increasing a gauge of a rail (11) upon which said device (11) is mounted as a slope of the rail varies, see abstract section.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Cretors (US 2,528,265).

Claim 5

Cretors meets all the limitations of claim 5 by showing in fig. 1, a rail mounted transportation system comprising a rail (14) with upper surface (16) and lower surface and a support body (12) comprising a means (46) for movably supporting said support body on the upper surface and a lower means (30) for movably contacting said support body on the lower surface, said support body being thereby mountable upon said rail for traversing along a length of said rail; and wherein said upper means and said lower means are maintained in operable communication with the rail (14) by torque, wherein further a distance such as the centerline distance of the two wheels (46, and 30) between the upper surface and the lower surface is a function of the rail, and wherein further the distance between the upper means and the lower means does not change during travel.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Abouzakhm (US 4,961,385).

Claim 2

Abouzakhm meets all the limitations of claim 2 by showing in fig. 1, a rail mounted transportation system comprising a rail constituted by cable system (10) with upper and lower surfaces (19, 17) and a support body (101) being mountable upon said rail for traversing along a length of said rail by an upper traversing member (103) which is a closest wheel in operable communication with the upper surface of the rail and a lower traversing member (113) which is a furthest wheel maintained in operable communication with the rail by torque generated by gravity, wherein said upper traversing member and said lower traversing member are in a fixed relationship to one another, wherein the upper surface and the lower surfaces of the rail (11) are separated by a distance that varies along the length of the rail.

***Allowable Subject Matter***

6. Claim 4 stand allowable. None of the references of record suggests a rail mounted transportation system wherein the closest wheel is adapted to operate as a fulcrum with respect to a weight of said support body, and wherein a rotation about said fulcrum is terminated by contact between said furthest wheel and said rail, and wherein a magnitude of said rotation is relative to a gauge of said rail in the manner defined in the instant claim 4.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-

8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz F. Jules  
Examiner  
Art Unit 3617

FFJ

July 14, 2004

FRANTZ F. JULES  
PRIMARY EXAMINER

